

**Stricken language would be deleted from present law. Underlined language would be added to present law.**

State of Arkansas As Engrossed: H3/12/97 H3/26/97 S4/3/97

81st General Assembly **A Bill ACT 1317 OF 1997**

Regular Session, 1997 HOUSE BILL 1475

By: Representative Young

**For An Act To Be Entitled**

AN ACT TO PROVIDE THAT ADJUDICATIONS OF GUILT FOR MISDEMEANOR SEX OFFENSES AND MISDEMEANORS INVOLVING VIOLENCE CAN BE USED MAKING PROFESSIONAL LICENSING DECISIONS; TO REQUIRE LICENSED PROFESSIONAL AND ASSOCIATE COUNSELORS, SOCIAL WORKERS, PSYCHOLOGISTS, PSYCHOLOGICAL EXAMINERS TO UNDERGO A CRIMINAL BACKGROUND CHECK PRIOR TO BEING ISSUED A PROFESSIONAL LICENSE IN THIS STATE; AND FOR OTHER PURPOSES."

**Subtitle**

"TO REQUIRE A CRIMINAL BACKGROUND CHECK BE PERFORMED BEFORE CERTAIN PROFESSIONAL LICENSES ARE ISSUED IN THIS STATE."

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:**

SECTION 1. Arkansas Code Annotated 17-1-103, relating to criminal offenders and professional licensure, is amended to read as follows:

"17-1-103. Registration, certification, and licensing for criminal offenders.

(a) It is the policy of the State of Arkansas to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The public is best protected when offenders are given the opportunity to secure employment or to engage in a meaningful trade, occupation, or profession.

(b) Subject to the provisions of subsection (c) of this section, in determining eligibility under this section, the board, commission, department, or agency may take into consideration conviction of certain crimes which have

not been annulled, expunged, or pardoned. However, such convictions shall not operate as an automatic bar to registration, certification, or licensing for any trade, profession, or occupation.

(c) The following criminal records shall not be used, distributed, or disseminated in connection with an application for a registration, license, or certificate:

(1) Records of arrest not followed by a valid felony conviction by the courts;

(2) Convictions which have been annulled or expunged or pardoned by the Governor; and

(3) Misdemeanor convictions, except misdemeanor sex offenses and misdemeanors involving violence.

(d) The board, commission, department, or agency shall state explicitly in writing the reasons for a decision which prohibits the applicant from practicing the trade, occupation, or profession if the decision is based in whole or in part on conviction of a felony.

(e) For the purposes of this section, completion of the following shall be deemed prima facie evidence of sufficient rehabilitation:

(1) Probation or parole supervision; ~~or~~ and

(2) A period of ~~three (3)~~ five (5) years after final discharge or release from any term of imprisonment in the state penitentiary without any subsequent conviction.

(f) Any complaints concerning the violation of this section shall be adjudicated in accordance with the procedure set forth in the Arkansas Administrative Procedure Act, as amended, 25-15-201 et seq., for administrative and judicial review.

(g) This section shall apply to any board, commission, department, agency, or any other body that deals in licensing or regulating a profession, trade, or occupation in the State of Arkansas.

(h) It shall be the duty of the Secretary of State to make this section known to any board, commission, department, or agency affected by this section."

SECTION 2. Arkansas Code 17-27-301, relating to eligibility for licensure of professional counselors, is amended to read as follows:

"17-27-301. Licensed professional counselor - Qualifications.

The board shall issue a license as a licensed professional counselor to each applicant who files an application upon a form and in such manner as the board prescribes, accompanied by a fee as set by the board, and who furnishes satisfactory evidence of the following to the board:

- (1) The applicant is not a minor under the laws of Arkansas;
- (2) The applicant is highly regarded in personal character and professional ethics;
- (3) The applicant is not in violation of any of the provisions of this chapter and the rules and regulations adopted hereunder;

(4) The applicant has applied for a criminal background check and has not been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in 17-27-309(f);

~~(4)~~(5) The applicant has received a graduate degree from a regionally accredited institution of higher education which is primarily professional counseling in content and has accumulated at least thirty-six (36) graduate semester hours and which meets the academic and training content standard established by the board. The board shall use the standards for the preparation of counselors prepared by that special professional association nationally as a guide in establishing the standards for counseling;

~~(5)~~(6) The applicant has three (3) years of supervised full-time experience in professional counseling acceptable to the board. One (1) year of experience may be gained for each thirty (30) graduate semester hours earned beyond the master's degree, provided that the hours are clearly related to the field of counseling and are acceptable to the board. In no case may the applicant have less than one (1) year of professional experience; and

~~(6)~~(7) The applicant will declare special competencies and demonstrate professional competence in specialty areas by passing a written or oral or situational examination, or any combination thereof, as the board will prescribe. Upon examination of credentials the board, by a majority

of the board members present and voting, may consider such credentials adequate evidence of professional competence and recommend to the chairman of the board that a license be approved in that specialty."

SECTION 3. Arkansas Code Annotated 17-27-302, relating to eligibility for licensure of associate counselors, is amended to read as follows:

"17-27-302. Licensed associate counselor - Qualifications.

(a) The board shall issue a license of licensed associate counselor to each applicant who meets the requirements established in 17-27-301, with the exception of 17-27-301~~(5)~~(6).

(b) The licensed associate counselor may practice only under direct supervision of a licensed professional counselor.

(c) The plan for supervision of the licensed associate counselor must be approved by the board prior to any actual performance of counseling on the part of the licensed associate counselor.

(d) Any licensed associate counselor may petition the board for licensure review for the licensed professional counselor provided that requirements of 17-27-301~~(5)~~(6) have been completed."

SECTION 4. Arkansas Code Annotated 17-27-306, relating to licensure of professional and associate counselors, is amended to read as follows:

"17-27-306. Suspension or revocation.

(a) The board shall have the power to suspend or revoke the license of any person found guilty of violating any ethical or professional standard. The sanction of suspension upon order of the board shall not be for a period greater than six (6) months. Any licensee thereby sanctioned shall not be allowed to practice counseling in this state until the termination of the suspension period and subsequent timely review by the board.

(b) The board shall revoke the license of any person who is found guilty of or pleads guilty or nolo contendere to any offense listed in 17-27-309(f), unless the person requests and the board grants a waiver pursuant to 17-27-309(h)."

SECTION 5. Subchapter 3 of Chapter 27 of Title 17 of the Arkansas Code Annotated, relating to licensure of professional and associate counselors, is amended by adding the following new section:

"17-27-309. Criminal background checks.

(a) On and after October 1, 1997, each first-time applicant for a license issued by the board shall be required to apply to the Identification Bureau of the Arkansas State Police for a state and national criminal background check, to be conducted by the Federal Bureau of Investigation.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Arkansas State Police shall forward all information obtained concerning the applicant in the commission of any offense listed in subsection (f) of this section to the board.

(e) At the conclusion of any background check required by this section, the Identification Bureau of the Arkansas State Police shall promptly destroy the fingerprint card of the applicant.

(f) No person shall be eligible to receive or hold a license issued by the board if that person has pleaded guilty or nolo contendere to, or been found guilty of, any of the following offenses by any court in the State of Arkansas, or of any similar offense by a court in another state, or of any similar offense by a federal court:

(1) Capital murder, as prohibited in A.C.A. §5-10-101;

(2) Murder in the first degree and second degree, as prohibited in A.C.A. §5-10-102 and 5-10-103;

(3) Manslaughter, as prohibited in A.C.A. §5-10-104;

(4) Negligent homicide, as prohibited in A.C.A. §5-10-105;

(5) Kidnapping, as prohibited in A.C.A. §5-11-102;

(6) False imprisonment in the first degree, as prohibited in A.C.A. §5-11-103;

- (7) Permanent detention or restraint, as prohibited in A.C.A. §5-11-106;
- (8) Robbery, as prohibited in A.C.A. 5-12-102;
- (9) Aggravated robbery, as prohibited in A.C.A. 5-12-103;
- (10) Battery in the first degree, as prohibited in A.C.A. §5-13-201;
- (11) Aggravated assault, as prohibited in A.C.A. §5-13-204;
- (12) Introduction of controlled substance into body of another person, as prohibited in A.C.A. 5-13-210;
- (13) Terroristic threatening in the first degree, as prohibited in A.C.A. §5-13-301;
- (14) Rape and carnal abuse in the first degree, second degree, and third degree, as prohibited in A.C.A. §5-14-103 - 5-14-106;
- (15) Sexual abuse in the first degree and second degree, as prohibited in A.C.A. §5-14-108 and 5-14-109;
- (16) Sexual solicitation of a child, as prohibited in A.C.A. §5-14-110;
- (17) Violation of a minor in the first degree and second degree, as prohibited in A.C.A. §5-14-120 and 5-14-121;
- (18) Incest, as prohibited in A.C.A. §5-26-202;
- (19) Offenses against the family, as prohibited in A.C.A. 5-26-303 - 5-26-306;
- (20) Endangering the welfare of incompetent person in the first degree, as prohibited in A.C.A. §5-27-201;
- (21) Endangering the welfare of a minor in the first degree, as prohibited in A.C.A. §5-27-203;
- (22) Permitting child abuse, as prohibited in subdivisions (a)(1) and (a)(3) of A.C.A. §5-27-221;
- (23) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, or pandering or possessing visual or print

medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in A.C.A. §5-27-303, 5-27-304, 5-27-305, 5-27-402, and 5-27-403;

(24) Felony adult abuse, as prohibited in A.C.A. 5-28-103;

(25) Theft of property, as prohibited in A.C.A. 5-36-103;

(26) Theft by receiving, as prohibited in A.C.A. 5-36-106;

(27) Arson, as prohibited in A.C.A. 5-38-301;

(28) Burglary, as prohibited in A.C.A. 5-39-201;

(29) Felony violation of the Uniform Controlled Substances Act, as prohibited in A.C.A. §5-64-401;

(30) Promotion of prostitution in the first degree, as prohibited in A.C.A. §5-70-104;

(31) Stalking, as prohibited in A.C.A. 5-71-229; and

(32) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, as prohibited in A.C.A. §5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection.

(g)(1) The board may issue a six-month nonrenewable letter of provisional eligibility for licensure to a first-time applicant pending the results of the criminal background check.

(2) Upon receipt of information from the Identification Bureau of the Arkansas State Police that the person holding such letter of provisional licensure has pleaded guilty or nolo contendere to, or been found guilty of, any offense listed in subsection (f) of this section, the board shall immediately revoke the provisional license.

(h)(1) The provisions of subsections (f) and (g)(2) of this section may be waived by the board upon the request of:

(A) An affected applicant for licensure; or

(B) The person holding a license subject to revocation.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of children.

(i) Any information received by the board from the Identification Bureau of the Arkansas State Police pursuant to this section shall not be available for examination except by the affected applicant for licensure, or his authorized representative, or the person whose license is subject to revocation, or his authorized representative. No record, file, or document shall be removed from the custody of the Arkansas State Police.

(j) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

(k) Rights of privilege and confidentiality established herein shall not extend to any document created for purposes other than this background check.

(l) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

(m) By October 1, 2000, all persons licensed by the board prior to October 1, 1997, shall be required to apply for a criminal history check in the same manner as an applicant for licensure under this section. The board shall develop and adopt a regulation that prescribes how criminal history checks for persons licensed prior to October 1, 1997 will be phased-in during the period prior to October 1, 2000."

SECTION 6. Arkansas Code 17-46-305, relating to licensure of social workers, is amended to read as follows:



"17-46-305. Renewal, revocation, suspension - Disciplinary proceedings.

(a) The board may refuse to issue or renew a license or may revoke or suspend a license issued under this chapter for any of the following causes or reasons:

(1) Violation of a provision of this chapter;

(2) Gross negligence in the practice of social work; or

(3) Engaging in a course of unprofessional conduct as defined by the rules established by the board or violation of the code of ethics made and published by the board~~+~~

(4) Conviction in this or any other state of any crime that is a felony in this state; or

(5) Has been convicted of a felony in a federal court .

(b) The board shall refuse to issue or revoke the license of any person who is found guilty of or pleads guilty or nolo contendere to any offense listed in 17-46-307(f), unless the person requests and the board grants a waiver pursuant to 17-46-307(h) .

~~(b)~~ (c) Hearings shall be conducted by the board. Decisions will be determined by a majority vote of the board. All proceedings will be conducted in accordance with the Arkansas Administrative Procedure Act, as amended, 25-15-201 et seq."

SECTION 7. Arkansas Code 17-46-306, relating to eligibility for licensure of social workers, is amended to read as follows:

"17-46-306. Qualifications - Issuance.

(a) The board shall issue a license as a licensed social worker to an applicant who qualifies as follows:

(1) Has a baccalaureate degree in a social work program

accredited by the Council on Social Work Education or receives before June 17, 1986, a baccalaureate degree in a social work program from an accredited educational institution;~~—and~~

(2) Has passed an examination approved by the board for this purpose and level of practice; and

(3) Has applied for a criminal background check and has not been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in 17-46-307(f).

(b) The board shall issue a license as a licensed master social worker to an applicant who qualifies as follows:

(1) Has a master's degree from an accredited social work program in an accredited institution approved by the Council on Social Work Education; ~~and~~

(2) Has passed an examination approved by the board for this purpose and level of practice; and

(3) Has applied for a criminal background check and has not been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in 17-46-307(f).

(c) The board shall issue a license as a licensed certified social worker to an applicant who qualifies as follows:

(1) Has a master's degree from an accredited social work program in an accredited institution approved by the Council on Social Work Education;

(2) Has two (2) years of supervised social work experience in a clinical or nonclinical concentration by a licensed certified social worker licensed under this law beyond the master's degree; ~~and~~

(3) Has passed an examination approved by the board for this purpose and level of practice; and

(4) Has applied for a criminal background check and has not been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in 17-46-307(f). "

SECTION 8. Subchapter 3 of Chapter 46 of Title 17 of the Arkansas Code Annotated, relating to licensure of social workers, is amended by adding the following new section:

"17-46-307. Criminal background checks.

(a) On and after October 1, 1997, each first-time applicant for a

license issued by the board shall be required to apply to the Identification Bureau of the Arkansas State Police for a state and national criminal background check, to be conducted by the Federal Bureau of Investigation.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Arkansas State Police shall forward all information obtained concerning the applicant in the commission of any offense listed in subsection (f) of this section to the board.

(e) At the conclusion of any background check required by this section, the Identification Bureau of the Arkansas State Police shall promptly destroy the fingerprint card of the applicant.

(f) No person shall be eligible to receive or hold a license issued by the board if that person has pleaded guilty or nolo contendere to, or been found guilty of, any of the following offenses by any court in the State of Arkansas, or of any similar offense by a court in another state, or of any similar offense by a federal court:

(1) Capital murder, as prohibited in A.C.A. §5-10-101;

(2) Murder in the first degree and second degree, as prohibited in A.C.A. §5-10-102 and 5-10-103;

(3) Manslaughter, as prohibited in A.C.A. §5-10-104;

(4) Negligent homicide, as prohibited in A.C.A. §5-10-105;

(5) Kidnapping, as prohibited in A.C.A. §5-11-102;

(6) False imprisonment in the first degree, as prohibited in A.C.A. §5-11-103;

(7) Permanent detention or restraint, as prohibited in A.C.A. §5-11-106;

- (8) Robbery, as prohibited in A.C.A. 5-12-102;
- (9) Aggravated robbery, as prohibited in A.C.A. 5-12-103;
- (10) Battery in the first degree, as prohibited in A.C.A. □5-13-201;
- (11) Aggravated assault, as prohibited in A.C.A. □5-13-204;
- (12) Introduction of controlled substance into body of another person, as prohibited in A.C.A. 5-13-210;
- (13) Terroristic threatening in the first degree, as prohibited in A.C.A. □5-13-301;
- (14) Rape and carnal abuse in the first degree, second degree, and third degree, as prohibited in A.C.A. □5-14-103 - 5-14-106;
- (15) Sexual abuse in the first degree and second degree, as prohibited in A.C.A. □5-14-108 and 5-14-109;
- (16) Sexual solicitation of a child, as prohibited in A.C.A. □5-14-110;
- (17) Violation of a minor in the first degree and second degree, as prohibited in A.C.A. □5-14-120 and 5-14-121;
- (18) Incest, as prohibited in A.C.A. □5-26-202;
- (19) Offenses against the family, as prohibited in A.C.A. 5-26-303 - 5-26-306;
- (20) Endangering the welfare of incompetent person in the first degree, as prohibited in A.C.A. □5-27-201;
- (21) Endangering the welfare of a minor in the first degree, as prohibited in A.C.A. □5-27-203;
- (22) Permitting child abuse, as prohibited in subdivisions (a)(1) and (a)(3) of A.C.A. □5-27-221;
- (23) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, or pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of

a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in A.C.A. ☐ 5-27-303, 5-27-304, 5-27-305, 5-27-402, and 5-27-403;

(24) Felony adult abuse, as prohibited in A.C.A. 5-28-103;

(25) Theft of property, as prohibited in A.C.A. 5-36-103;

(26) Theft by receiving, as prohibited in A.C.A. 5-36-106;

(27) Arson, as prohibited in A.C.A. 5-38-301;

(28) Burglary, as prohibited in A.C.A. 5-39-201;

(29) Felony violation of the Uniform Controlled Substances Act, as prohibited in A.C.A. ☐ 5-64-401;

(30) Promotion of prostitution in the first degree, as prohibited in A.C.A. ☐ 5-70-104;

(31) Stalking, as prohibited in A.C.A. 5-71-229; and

(32) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, as prohibited in A.C.A. ☐ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection.

(g)(1) The board may issue a six-month nonrenewable letter of provisional eligibility for licensure to a first-time applicant pending the results of the criminal background check.

(2) Upon receipt of information from the Identification Bureau of the Arkansas State Police that the person holding such letter of provisional licensure has pleaded guilty or nolo contendere to, or been found guilty of, any offense listed in subsection (f) of this section, the board shall immediately revoke the provisional license.

(h)(1) The provisions of subsections (f) and (g)(2) of this section may be waived by the board upon the request of:

(A) An affected applicant for licensure; or

(B) The person holding a license subject to revocation.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of children.

(i) Any information received by the board from the Identification Bureau of the Arkansas State Police pursuant to this section shall not be available for examination except by the affected applicant for licensure, or his authorized representative, or the person whose license is subject to revocation, or his authorized representative. No record, file, or document shall be removed from the custody of the Arkansas State Police.

(j) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

(k) Rights of privilege and confidentiality established herein shall not extend to any document created for purposes other than this background check.

(l) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

(m) By October 1, 2000, all persons licensed by the board prior to October 1, 1997, shall be required to apply for a criminal history check in the same manner as an applicant for licensure under this section. The board shall develop and adopt a regulation that prescribes how criminal history checks for persons licensed prior to October 1, 1997 will be phased-in during the period prior to October 1, 2000."

SECTION 9. Arkansas Code Annotated 17-97-302(b), relating to eligibility for licensure of psychologists, is amended to read as follows:

"(b)(1) A candidate for a license shall furnish the board with satisfactory evidence that he:

(A) Is of good moral character;

(B) Has received a doctoral degree in psychology from an accredited institution recognized by the board as maintaining satisfactory standards at the time the degree was granted or, in lieu of degree, a doctoral degree in a closely allied field, if it is the opinion of the board that the training required therefor is substantially similar;

(C) Has had at least ~~one (1) year~~ two (2) years of experience in psychology of a type considered by the board to be qualifying in nature with at least one (1) of those years being post doctoral work;

(D) Is competent in psychology, as shown by passing such examinations, written or oral, or both, as the board deems necessary;

(E) Is not considered by the board to be engaged in unethical practice; ~~and~~

(F) Has applied for a criminal background check and has not been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in 17-97-312(f); and

~~(F)~~(G) Has not, within the preceding six (6) months, failed an examination given by the board.

(2) The board may at its discretion accept satisfactory substitute training and experience in lieu of that prescribed in subdivision

(b)(1) of this section."

SECTION 10. Arkansas Code Annotated 17-97-303(b), relating to eligibility for licensure of psychological examiners, is amended to read as follows:

"(b)(1) A candidate for a license shall furnish the board with satisfactory evidence that he:

(A) Is of good moral character;

(B) Has had two (2) academic years of graduate training in psychology, including a master's degree from an accredited educational institution recognized by the board as maintaining satisfactory standards or, in lieu thereof, such training and experience as the board shall consider equivalent;

(C) Is competent as a psychological examiner as shown by passing such examinations, written or oral, or both, as the board deems necessary;

(D) Is not considered by the board to be engaged in unethical practice; ~~and~~

(E) Has applied for a criminal background check and has not been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in 17-97-312(f); and

~~(E)~~ (F) Has not, within the preceding six (6) months, failed an examination given by the board.

(2) The board may at its discretion accept satisfactory substitute training and experience in lieu of that prescribed in subdivision (b)(1) of this section."

SECTION 11. Arkansas Code Annotated 17-97-310, relating to licensure of psychologists and psychological examiners, is amended to read as follows:

"17-97-310. Denial, suspension, or revocation - Grounds - Reinstatement.

(a) The Arkansas Board of Examiners in Psychology may refuse to grant a certificate or may recommend suspension of any license for a period to be determined by the board, on the following grounds:

(1) The employment of fraud or deception in applying for a license or in passing the examination provided for in this chapter;

~~—(2) Conviction of felony;~~

(3)(2) The practice of psychology under a false or assumed name or the impersonation of another practitioner of a like or different name;

~~(4)~~ (3) Habitual intemperance in the use of ardent spirits, narcotics, or stimulants to such an extent as to incapacitate the licensee or applicant for the performance of his duties;



~~(5)~~ (4) Violation of the Arkansas Medical Practices Act, 17-95-201 et seq.;

~~(6)~~ (5) Practice of a level of psychology inappropriate to the particular license held by the licentiate;

~~(7)~~ (6) Upon recommendation of the ethics committee of the Arkansas Psychological Association or of the American Psychological Association; or

~~(8)~~ (7) Negligence or wrongful actions in the performance of his duties.

(b) The board shall refuse to issue or revoke the license of any person who has been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in 17-97-312(f), unless the person requests and the board grants a waiver pursuant to 17-97-312(h).

~~(b)~~ (c) (1) Upon satisfactory proof that any applicant or licentiate has been guilty of any of the above offenses, the board may refuse to grant a certificate to the applicant or may revoke a license of the licentiate upon a vote of at least three (3) members of the board.

(2) An application for reinstatement may be made to the board, and the board may, upon favorable action by three (3) of its members, reinstate the applicant."

SECTION 12. Subchapter 3 of Chapter 97 of Title 17 of the Arkansas Code Annotated, relating to licensure of psychologists and psychological examiners, is amended to read as follows:

"17-97-312. Criminal background checks.

(a) On and after October 1, 1997, each first-time applicant for a license issued by the board shall be required to apply to the Identification Bureau of the Arkansas State Police for a state and national criminal background check, to be conducted by the Federal Bureau of Investigation.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Arkansas State Police shall forward all information obtained concerning the applicant in the commission of any offense listed in subsection (f) of this section to the board.

(e) At the conclusion of any background check required by this section, the Identification Bureau of the Arkansas State Police shall promptly destroy the fingerprint card of the applicant.

(f) No person shall be eligible to receive or hold a license issued by the board if that person has pleaded guilty or nolo contendere to, or been found guilty of, any of the following offenses by any court in the State of Arkansas, or of any similar offense by a court in another state, or of any similar offense by a federal court:

(1) Capital murder, as prohibited in A.C.A. §5-10-101;

(2) Murder in the first degree and second degree, as prohibited in A.C.A. §5-10-102 and 5-10-103;

(3) Manslaughter, as prohibited in A.C.A. §5-10-104;

(4) Negligent homicide, as prohibited in A.C.A. §5-10-105;

(5) Kidnapping, as prohibited in A.C.A. §5-11-102;

(6) False imprisonment in the first degree, as prohibited in A.C.A. §5-11-103;

(7) Permanent detention or restraint, as prohibited in A.C.A. §5-11-106;

(8) Robbery, as prohibited in A.C.A. 5-12-102;

(9) Aggravated robbery, as prohibited in A.C.A. 5-12-103;

(10) Battery in the first degree, as prohibited in A.C.A. §5-13-201;

(11) Aggravated assault, as prohibited in A.C.A. §5-13-204;

(12) Introduction of controlled substance into body of another person, as prohibited in A.C.A. 5-13-210;

(13) Terroristic threatening in the first degree, as prohibited in A.C.A. §5-13-301;

(14) Rape and carnal abuse in the first degree, second degree, and third degree, as prohibited in A.C.A. §5-14-103 - 5-14-106;

(15) Sexual abuse in the first degree and second degree, as prohibited in A.C.A. §5-14-108 and 5-14-109;

(16) Sexual solicitation of a child, as prohibited in A.C.A. §5-14-110;

(17) Violation of a minor in the first degree and second degree, as prohibited in A.C.A. §5-14-120 and 5-14-121;

(18) Incest, as prohibited in A.C.A. §5-26-202;

(19) Offenses against the family, as prohibited in A.C.A. 5-26-303 - 5-26-306;

(20) Endangering the welfare of incompetent person in the first degree, as prohibited in A.C.A. §5-27-201;

(21) Endangering the welfare of a minor in the first degree, as prohibited in A.C.A. §5-27-203;

(22) Permitting child abuse, as prohibited in subdivisions (a)(1) and (a)(3) of A.C.A. §5-27-221;

(23) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, or pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in A.C.A. §5-27-303, 5-27-304, 5-27-305, 5-27-402, and 5-27-403;

(24) Felony adult abuse, as prohibited in A.C.A. 5-28-103;

(25) Theft of property, as prohibited in A.C.A. 5-36-103;

(26) Theft by receiving, as prohibited in A.C.A. 5-36-106;

(27) Arson, as prohibited in A.C.A. 5-38-301;

(28) Burglary, as prohibited in A.C.A. 5-39-201;

(29) Felony violation of the Uniform Controlled Substances Act, as prohibited in A.C.A. §5-64-401;

(30) Promotion of prostitution in the first degree, as prohibited in A.C.A. §5-70-104;

(31) Stalking, as prohibited in A.C.A. 5-71-229; and

(32) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, as prohibited in A.C.A. §5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection.

(g)(1) The board may issue a six-month nonrenewable letter of provisional eligibility for licensure to a first-time applicant pending the results of the criminal background check.

(2) Upon receipt of information from the Identification Bureau of the Arkansas State Police that the person holding such letter of provisional licensure has pleaded guilty or nolo contendere to, or been found guilty of, any offense listed in subsection (f) of this section, the board shall immediately revoke the provisional license.

(h)(1) The provisions of subsections (f) and (g)(2) of this section may be waived by the board upon the request of:

(A) An affected applicant for licensure; or

(B) The person holding a license subject to revocation.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of children.

(i) Any information received by the board from the Identification Bureau of the Arkansas State Police pursuant to this section shall not be available for examination except by the affected applicant for licensure, or his authorized representative, or the person whose license is subject to revocation, or his authorized representative. No record, file, or document shall be removed from the custody of the Arkansas State Police.

(j) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

(k) Rights of privilege and confidentiality established herein shall not extend to any document created for purposes other than this background check.

(l) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

(m) By October 1, 2000, all persons licensed by the board prior to October 1, 1997, shall be required to apply for a criminal history check in the same manner as an applicant for licensure under this section. The board shall develop and adopt a regulation that prescribes how criminal history checks for persons licensed prior to October 1, 1997 will be phased-in during the period prior to October 1, 2000."

SECTION 13. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 15. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 16. EMERGENCY. It is found and determined by the General Assembly of the State of Arkansas that Arkansas children and their parents or guardians should be secure in the knowledge that professional persons who have direct contact with children do not have criminal records and are not a potential threat to the safety of their children; and that an increasing number of incidents are occurring where professional persons are abusing children entrusted into their care; and that in some cases

these incidents could have been avoided had the persons been subjected to a criminal background check. It is further found and determined that, in some instances, allegations of employee criminal misconduct involving children are not being investigated. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on October 1, 1997.

/s/Rep. Young

APPROVED:4-10-97